Supreme Court, U.S.
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No. _____

In the
Supreme Court of United States

IN THE MATTER OF KINGSLEY K. HUBBY

BEN HUBBY MD
Petitioner

DAY PITNEY LLP
Respondent

On Petition for Writ of Certiorari to the Supreme Court of Connecticut

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED [1]

1) By misapplying Connecticut law and the U. S. Constitution did the Connecticut state courts, in support of a politically favored law firm, create a class of citizens to be denied equal protection of the laws?

2) Were the Fourteenth Amendment rights of Mrs. Hubby, a 99 year old vulnerable elder, violated by the state courts of Connecticut?

2) Under the Constitution, do elder citizens have a right to arrange their security free from invasion by the State and a private party?

PARTIES TO THE PROCEEDING

Mrs. Hubby, age 99, is Ben Hubby's mother. She resides in East Lyme CT.

The respondent in the action is the law firm Day Pitney LLP of Hartford CT.

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1 To repair wrongs in Mrs. Hubby's life, this case was brought as "*In the matter of Kingsley K. Hubby*", the style adopted by the court. (Appendix **A**), which Petitioner continued to the Connecticut Supreme Court (Appendix **B**). The clerks' offices changed it as a law suit *against* Mrs. Hubby, who, at 99, will not understand how a rescue operation could so transform. Petitioner respectfully asks no party be allowed to style this as a suit against Mrs. Hubby.

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v.
Standing

Ben Hubby comes to the Supreme Court as a Petitioner to the Connecticut Supreme Court, whose ruling is contrary to the U. S. Constitution.

When Ben Hubby discovered his mother's stewardship was broken, he initiated a plan to repair and was opposed by the law firm that intruded upon her life and affairs.

At age 98, Mrs. Hubby was not able to keep Day Pitney's senior partner, who represented the man whose threat frightened her, from becoming her lawyer too.

Mrs. Hubby's inability to defend her established client attorney relationship from being intruded upon, provided Ben Hubby standing, under Section 45a-648 of Chapter 802h of the Connecticut statutes,[2] to petition to be named his impaired mother's involuntary conservator and move the machinery of the judiciary for her. (Section III)

It is obvious Mrs. Hubby needs a guardian, yet Probate Court blocked a hearing on Ben Hubby's petition to be named his mother's conservator for 5 ½ months, by which time, he moved for a *trial de novo* in Superior Court.

In Connecticut, a person with real interest in the issue at stake, may invoke jurisdiction of the court. *Goodyear v. Discala*, 269 Conn. 507, 511 (2004).

As petitioner, Ben Hubby was allowed to stand for his mother and submit pleadings, appear and argue before Probate, Superior and Appellate Courts, and to

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2 See "Statutory and Constitutional Provisions Involved" on Page 2 of Petition

petition the Connecticut Supreme Court. The trial courts acknowledged Ben Hubby had standing to challenge invasion of his mother's client-attorney relationship by Day Pitney.

As the appointment of a guardian for Mrs. Hubby's personhood was blocked, as no other challenged wrongs against her, as Ben Hubby was allowed to move the machinery of the judiciary for her and bring his petition to the Connecticut Supreme Court, he is the only person who can file a petition for a writ of certiorari on the Connecticut Supreme Court's ruling. [3]

Table of Authorities

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Meyer v. Nebraska, 262 U. S. 390 (1923) 17
Monroe v. Monroe, 177 Conn. 173 (1979) 13

3 Except for an attorney hired by Petitioner, if he could have afforded one at $ 250-300/hr for the hundreds of hours taken to address wrongs directed at his mother, which is why Petitioner is Pro se.

Plessy v. Ferguson, 163 U. S. 537 (1896) 11
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PETITION FOR WRIT OF CERTIORARI

Ben Hubby respectfully petitions for a writ of certiorari to review the final decision of the Connecticut Supreme Court on violation of his mothers Constitutional rights.

The Connecticut Supreme Court entered its order April 21, 2008, the case docketed as NO. PSC- 07-0269.

OPINIONS BELOW

The rulings of Probate, Superior Court, Appellate Court & the Connecticut Supreme Court are unreported. Probate's decree and the decisions of Appellate Court and the Connecticut Supreme Court are provided in the Appendix.

JURISDICTION

This has been litigation free Mrs. Hubby from acts against her by a powerful law firm,[4] aided by state courts; and litigation over the deprivation of Mrs. Hubby's freedom and property by the State and the firm without due process, and denial of equal protection of the laws.

For federal issues, the Supreme Court has jurisdiction over state supreme courts, and is compelled to intercede when state supreme courts allow violation of rights under the U. S. Constitution in the courts below.

The Connecticut Supreme Court's ruling on deprivation of Mrs. Hubby's U. S. Constitutional rights is the final

4 Day Berry in Hartford combined with the Pitney firm to form Day Pitney LLP in 2006 with 9 offices from Boston to Washington

ruling on that issue and, as shown in the Conclusion, essentially the final ruling in this case.

Jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

STATUTORY & CONSTITUTIONAL PROVISIONS INVOLVED

1) Sec 45 a- 648 of Chapter 802h of the Connecticut General Statues, in force when Ben Hubby brought his petition to the courts in January, 2007, specifies: "An application for involuntary representation may be filed by *any person alleging* that a respondent is incapable of managing his or her affairs or incapable of caring for himself or herself and stating the reasons for the alleged incapability."

On October 1, 2007, as Petitioner came from Superior to Appellate Court, Sec. 45a -648 was replaced by Section 13 of Public Act 07-116 , which also allows "any person" to petition to be named an involuntary conservator of an impaired person.

2) Section 1 of the 14th Amendment states: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Although Mrs. Kingsley Hubby, now 99, has solved London Times crossword puzzles, by 2006, she was unable to defend her client- attorney relationship from intrusion by Day Pitney, which voided her legal protections to help another client. (Section III)

In alliance with Mrs. Hubby's son in law, Mr. Gallup, Day Pitney brought a "*voluntary*" petition naming him conservator of Mrs. Hubby's estate, a petition she appeared not to understand when signed.

Probate transferred Mrs. Hubby's property from hercontrol; and took $50,000 of her money to pay Day Pitney for defense of actions against her before the State Bar.

As petitioner to be named Mrs. Hubby's involuntary conservator, Ben Hubby - a Savannah family practitioner - moved for disqualification of Day Pitney and fee return, denied by Probate and Superior Court. Appellate Court held Ben Hubby did not have standing to challenge Mrs. Hubby's "*choice*" of Day Pitney. (Section II)

In his petition to the Connecticut Supreme Court, Ben Hubby raised violation of Mrs. Hubby's Fourteenth Amendment rights.[5] (Appendix **B**) On April 21, 2008,

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5 In the Petition (Appendix **B**) in the 2nd Paragraph on Page 9, Ben Hubby references "..action of the State under the 14th Amendment.." followed by a description of entanglement between the state courts and Day Pitney creating state action under *Burton v. Wilmington Parking Authority*, 365 U. S. 715 (1961)- a 14th Amendment, Equal Protection case. This is followed by reference to fundamental rights as in *Snyder v.*

the Connecticut Supreme Court denied the petition to appeal without memorandum. (Appendix **I**)

Petitioner requests this Court to exercise its power to grant a writ of certiorari.

FACTUAL BACKGROUND

After her husband passed, Mrs. Hubby granted power of attorney to her eldest son, NM Hubby, whose lawyer, a senior partner of Day Pitney,[6] crafted the instrument (Appendix **C** Para 3) [7]

Soon after seeing a blustery message from NM to Marcia Dubreuil, head of Mrs. Hubby's home care team, threatening to send Mrs. Hubby to a nursing home unless Marcia did his bidding (5), Mrs. Hubby discovered her house was just appraised for sale. Panicked, she sought protection from attorney Granville Morris, who helped her revoke NM's sole power of attorney and craft a joint instrument, granting him power only as shared with his sisters. (7)

Learning of Mrs. Hubby's revocation letter (Appendix **D**), the senior partner strategized on how to get NM's power back. (6)

Massachusetts, 291 U. S. 97 (1933). The Connecticut Supreme Court was thus put on notice that in this case, equal protection under the 14h Amendment was denied in this case and a fundamental right under the 14th Amendment was deprived without due process.

6 In '06 Day Berry Howard became Day Pitney Not wishing to pillory the attorney, BH refers to him as "*the senior partner*"

7 Citations henceforth denoted as (#) refer to numbered paragraphs in Petitioner's sworn Statement of Facts, (Appendix **C**) within his appeal to Superior Court

The senior partner became Mrs. Hubby's lawyer too

On meeting Mrs. Hubby, the senior partner became her attorney too. (7) Challenged on conflict of interest, he stated he was just "*a narrow technical advisor*" to NM and Mrs. Hubby. (19) . Although Mrs. Hubby revoked NM's sole power of attorney, the senior partner said he kept it in force, along with the shared instrument (20), which forbade sole action.

The senior partner sent Ben Hubby copies of the sole power of attorney Mrs. Hubby signed on 12/12/05 and the shared instrument, signed on 4/13/06, and re-affirmed both were in effect. (23) (Appendix **E**)

The senior partner did not tell the sisters they had shared power with NM over Mrs. Hubby's affairs, as they were unaware when asked 8 months later. (13)

Events leading up to Probate hearing on 4/3/07

Ben Hubby presented a plan to fix Mrs. Hubby's quite broken stewardship, but was rebuffed with the statement " ...we don't have any power... (the senior partner) is in control of everything." (10).

Therefore, in early January, 2007, Ben Hubby petitioned to be named his mother's involuntary conservator, but temporarily laid his petition aside for family talks. (15) He was opposed by Gallup, who insisted Day Pitney remain in Mrs. Hubby's affairs. (24, 26, 33).

When Petitioner was in Connecticut in early February, 2007 to see about his mother, the senior partner tried to block him from meeting with her. (17) After Petitioner

announced intent to have the senior partner and Day Pitney disqualified, a *voluntary* petition was brought forth naming Gallup conservator of Mrs. Hubby's estate (26). Ben Hubby then activated his petition.

Close to this time, Mrs. Hubby indicated she was unaware of what was going on in her legal representing, including that her power of attorney arrangements were voided by her new lawyer. (2)

Marcia Dubreuil informed Ben Hubby when the petition naming Gallup arrived, Mrs. Hubby appeared not to understand what it was when signed. (27)

PROCEEDINGS BELOW

Probate Court

Mrs. Hubby was not present at the hearing to take up the motion for disqualification and Gallup's appointment as conservator of her estate. Judge *McNamara* refused to consider the motion for disqualification, stating conflict of interest "*is not pertinent* ", as Gallup could choose another attorney. (32) . Gallup indicated he would not. Ben Hubby protest of the senior partner's participation, because of conflict of interest, was ignored.

Petitioner said the *voluntary* petition naming Gallup was fatally flawed, as it was prepared by an attorney who harmed Mrs. Hubby's security, and the witness states Mrs. Hubby apparently did not know what the petition was when she signed it.

Judge *McNamara* indicated he was going to appoint Gallup no matter what, and referred to sworn facts

on Mrs. Hubby's broken stewardship as "*junk*" (30). Preparing the decree, the Court took jottings from the senior partner. (34)

After Probate transferred Mrs. Hubby's estate to Gallup (Appendix **A**), the Court would not schedule a hearing on Ben Hubby's petition for the next five and half months,[8] by which time Petitioner sought *trial de novo* in Superior Court.

Before the Statewide Grievance Committee, Day Pitney claimed $50,000 responding to Ben Hubby's petition and assertions of wrongdoing (Appendix **F**). Probate ordered Mrs. Hubby's estate to pay $50,000 for legal fees which is apparently this bill. (Appendix **G**)[9]

Superior Court

Superior Court Judge *Gordon* allowed Petitioner to move to disqualify Day Pitney, the senior partner having not appeared. The Court found it "*irregular*" Probate did not schedule a hearing on Ben Hubby's petition. On Judge *Gordon's* transfer to another district, *Judge Hurley* denied the motion to disqualify without memorandum, which was requested by Appellate Court and by Petitioner.

Appellate Court

Ben Hubby filed a memo on standing to challenge the intrusion of his mother's representation by Day

8 The law specifies a hearing 30 days after application, which after Ben Hubby activated his petition on March 28, 2007, required a hearing before the end of April.

9 Item D of Probate Court's Decree of June 12, 2007. (Appendix **G**).

Pitney. At the hearing on 1/9/08, an Appellate Court Justice stated, " *I am a close personal friend of Mr. Allan Taylor*", who argued for the firm.[10]

Petitioner asked the Clerk's Office and the Court by memo, the identity of the justice in order to craft a motion to recuse,[11] but received no reply.

Appellate Court dismissed Petitioner's appeal without a memorandum of decision, (Appendix **H**) though citing *Graham v. Estate of Graham*, 2 Conn. 252 (1984).

Supreme Court

Ben Hubby petitioned to have his appeal accepted by the Connecticut Supreme Court on violation of Mrs. Hubby's U. S. Constitutional rights, disqualification of Day Pitney & fee return (Appendix **B**), denied without memorandum. (Appendix **I**)

Ben Hubby's sworn facts are uncontroverted. Day Pitney brought *one fact* by affidavit to Superior Court 6/14/07, stating the senior partner and Day Pitney were *resigning* from Mrs. Hubby's representation. (Appendix **J**), yet Probate Court's decree of 11/16/2007 appears to indicate the senior partner was still Mrs. Hubby's attorney. (Appendix **K**)

Attorney John Ivimey, hired to do estate work for Mrs. Hubby, informed Petitioner in early 2008 that the senior partner continued to work for Mrs. Hubby.

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10 Mr. Taylor also is a senior partner of Day Pitney LLP and counsel for the firm in this case.

11 From a Court photo, the justice is identified as Herbert F. Gruendel

To keep Mrs. Hubby from having a competency evaluation, her physician was persuaded that Gallup is guardian of her personhood. Therefore, the doctor ought not speak to Ben Hubby about his mother's condition and competency.

It took intervention of an official at the Lawrence and Memorial Hospital in New London to make it crystal clear for everyone: *there is no guardian* of Mrs. Hubby's personhood. (Appendix A).

I

WHY THIS CASE PRESENTS ISSUES OF NATIONAL IMPORTANCE AND WHY THE WRIT SHOULD BE GRANTED

America is becoming gray, and gray America is quarry to exploitation.

The National Research council estimates between 1 and 2 million Americans age 65 or older have been mistreated or exploited by someone they relied on.[12]

Elders are often isolated with few in their lives to discuss complex matters.[13] Many have conditions, which interfere with comprehension.[14] Overly trusting, elders are easily persuaded to take actions injurious to their own interests.[15]

12 *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America* National Research Council. Richard Bonnie & Robert Wallace, Eds. (2002)

13 Lori A. Stiegel, *Financial Abuse of the Elderly: Risk Factors, Screening Techniques, and Remedies*. Bifocal, Summer 2002

14 *A Profile of Older Americans: 2002: Health, Healthcare and Disability*. Administration on Aging.

15 Nina Keilin, *Client Outreach 101: Solicitation of Elderly Clients By Seminar Under the Model Rules of Professional*

Professor Donna Harkness, of the University of Memphis, shows exploitation elders by unethical legal practices is widespread.[16]

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A cocoon of wrongdoing

The attorney who invaded Mrs. Hubby's life took control of her household and legal protections, thrown over with her freedom and autonomy. The State transferred her property on a petition she didn't understand. For a favored law firm, the courts refused to place Mrs. Hubby under the protection of law. An effort was launched to keep her physician from speaking to Ben Hubby, her physician son, about her health and competency, while the appointment of a guardian was blocked

It is reasonable to conclude the $50,000 in expenses Day Pitney claimed for reacting to Ben Hubby's petition and assertions of wrongdoing is the $50,000 Probate ordered Mrs. Hubby to pay. (Appendices **F** & **G**)

All across America, when exploited elders are unprotected by the courts, they can be trapped in *a cocoon of wrong doing, with no way out, just like this.*

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From this case, it appears the State of Connecticut carved out a class of citizens to be denied equal

Conduct, 62 Fordham Law Rev (1994)

16 Donna S. Harkness, *Packaged and Sold: Subjecting Elder Law Practice to Consumer Protection Law* Journal of Law and Policy 6/25/03

protection of the laws.

The class is citizens whose rights and interests are in conflict with lawyers and law firms held in such favor by state courts that protection by law is denied.

The class could be quite large, as the judiciary in Connecticut indicates an inclination to allow favor and friendship to affect application of law and Constitutional rights. (Section II & IV)

Here, the U. S. Supreme Court is provided opportunity to rule on elders' rights to forge their security free from invasion by the State; to direct the Connecticut Supreme Court to ensure equal protection of the laws in the state courts; and to "lay down the law" for all attorneys and all courts to beware the intersection of the improper practice of law with inappropriate influence in the courts that are duty bound to upholds the U. S. Constitution.

II

CREATION OF A CLASS OF CITIZENS DENIED EQUAL PROTECTION

Dissenting in *Plessy v. Ferguson*, 163 U. S. 537 (1896), Justice John Marshall Harlan wrote the Constitution knows no classes of citizens, yet in Connecticut there is a double standard of application of law and rights.

The Connecticut state courts do disqualify attorneys for conflict of interest, as in *American Heritage Inc. v. Gelinas*, 62 Conn. App.711, 725 (2001), but for a citizen

with a claim against a powerful law firm with influence in the judiciary, the courts rewarded friendship by refusing to safeguard Mrs. Hubby through application of state law, due process, the 14th Amendment, and Rules of Professional Conduct, especially pertaining to the lawyer's duty of loyalty to his client, such that a class of citizens was carved to lose their rights. (See below and Section IV)

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Failure of state courts to apply state law for the protection of Mrs. Hubby

The Appellate Court's ruling, not disturbed by the Connecticut Supreme Court, was to effect Ben Hubby did not have standing to challenge his mother's *choice* of the senior partner and Day Pitney. The ruling represents *plain error* because:

1. *Mrs. Hubby did not choose* Day Pitney; *she chose Mr. Morris* to protect her from the threat she felt, and was manipulated out of that relationship.

2. The Court's authority was *Graham v. Estate of Graham*, 2 Conn. App. 251 (1984), which does not apply. While Mrs. Graham was temporarily incapacitated, her estate was under conservatorship until she fully recovered.

Mrs. Hubby recognized in December, 2005, she could not manage her affairs. In June of 2006, her faculties could not have been intact, otherwise she would have known *it made no sense* to leave her protective relationship with Mr. Morris for one with the senior partner.

Mrs. Hubby's decision to switch was obviously not thought out, but manipulated by the senior partner with a strategy to overthrow her legal protections.

3. In none of the published Connecticut cases on conflict of interest found by Petitioner, have rulings hinged on standing to challenge, except in law suits with claims aimed at getting rid of opposing counsel.

In Connecticut, trial courts have power to regulate attorney conduct and duty to enforce standards of conduct. *Bergeron v. Mackler*, 225 Conn. 391 (1993), citing *State v. Jones*, 180 Conn. 443 (1980), overruled in part by *State v. Powell*, 186 Conn. 547 (1982); and discretion to determine if conflict of interests exists, warranting disqualification.

If competent to entertain the action, a court has subject matter jurisdiction. *Monroe v. Monroe*, 177 Conn. 173, 185 (1979). When a tribunal has authority and competence to decide a class of cases, to which the action belongs, subject matter jurisdiction is resolved in favor of entertaining the action. *Craig v. Bronson*, 202 Conn. 93, 101 (1987).

Trial courts can act *sua sponte* to discipline and sanction attorneys without reference to anyone's standing.

But to avoid disqualifying Day Pitney, the courts refused to apply this significant body of law, holding that Ben Hubby, the only person to challenge conflict of interest, could not do anything about it, whereas trial courts could come to the rescue of Mrs. Hubby.

Appellate Court's ruling violated the legislative intent of Section 45a-648, which was to ensure interests of impaired persons are looked after. The Appellate Court's ruling said the interests of this impaired elder could not be looked after.

The discrimination creating different classes

The discrimination was application of different standards state law, due process and Constitutional rights for citizens with interests in conflict with those of a powerful lawyer or law firm, held in favor by the state judiciary, *as opposed to* a different standard of protection for citizens *not caught in conflict* with such a lawyer or law firm, reflected in published cases on conflict of interest, as in *American Heritage Inc. v. Gelinas*, supra.

The creation of different classes of citizens, similarly situated, afforded different standards of legal protection, amounts to denial of equal justice, forbidden by the Constitution. *Yick Wo v. Hopkins* 356 U. S. 356 (1886).

The Court was shown equal protection was denied

The Supreme Court of Connecticut was put on notice Day Pitney was given a pass in the courts below; and " (b)ecause of what happened to Mrs. Hubby was so wrong .....and the ruling departed so far from the usual course of judicial proceedings, supervision by the Connecticut Supreme Court is called for." (Appendix **B**, bottom of Page 2)

Because Day Pitney was given a pass and the ruling

of Appellate Court violated the intent of the statute and ignored the power of trial courts to disqualify *sua sponte*, the Supreme Court of Connecticut was shown equal protection of the laws was denied.

Had there been equal protection, Day Pitney would not have been given a free pass and the Appellate Court ruling would have been according to case law and the legislative intent of Sec. 45a -648.

The Connecticut Supreme Court was obligated to inquire *what was so special* that caused the law to be thrown aside for the advantage of Day Pitney and the disadvantage of the firm's elder client?

Scrutiny

The Connecticut Supreme Court was to answer that question with *at least* intermediate scrutiny, because all citizens are to be provided *the same standard* of legal protection in the state courts of our fifty states

Yet in the Connecticut Supreme Court's denial of Ben Hubby's petition, there is no evidence of *any scrutiny* of apparent creation of different classes of citizens. (Appendix I)

When a state supreme court fails to provide scrutiny of evidence that lower courts deprived a citizen protection of law as to create a class denied equal protection, the

Supreme Court must act.

III

STATE ACTION IN THE DEPRIVATION OF MRS. HUBBY'S LIBERTY AND PROPERTY

Origin of deprivation of liberty and property

With a strategy to help a client retrieve his power of attorney, the senior partner met Mrs. Hubby in June 2006 and took her as a client also (7), although Rule 1.7 of the Rules of Professional Conduct forbids an attorney from representing two clients with adverse interests *Westport Bank and Trust Co. v. Corcoran, Mallin, et. al.*, 221 Conn. 490, 498 (1992) – NM's interest to have unrestrained power, Mrs. Hubby's interest to keep that from happening.

To restore NM's power, the senior partner took control of and voided Mrs. Hubby's legal protections, crafted by attorney Morris.

By keeping NM's sole power of attorney in force though Mrs. Hubby revoked it, and by not telling the sisters they had joint power of attorney (13), the weakening of a client's interests to benefit somebody else was accomplished.

Autonomy and freedom

The senior partner's quest for control over Mrs. Hubby's liberty was so extreme, he tried to prevent Ben Hubby from meeting with his mother, having journeyed a thousand miles to attend her (17).

In voiding Mrs. Hubby's power of attorney arrangements, taking control of her household and deciding who was to have power of attorney, Day Pitney took Mrs. Hubby's freedom and autonomy.

A castle the King dared not

Early English common law allowed the Sheriff, on the King's command, to invade the house of any person the King wished to arrest. But, by 1763, a man's house was a castle the King dared not storm, as attested by William Pitt: "... it may be frail, its roof may shake; the wind may blow through it...but the King of England may not enter." [17]

As law developed in America, the cases below expanded personal liberties inviolable by government.

Boyd v. United States 116 U. S. 616, 630 (1886) speaks of "...the very essence of constitutional liberty and security....the sanctity of a man's home and the privacies of life...his indefeasible right of personal security...."

Meyer v. Nebraska 262 U. S. 390, 399 (1923), describes a spectrum of liberties the State cannot invade without due process, including the right to "... enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

Part of happiness is peace of mind that comes with a sense of security. Mrs. Hubby made a personal decision that for her peace of mind, she desired a change in her power of attorney arrangements. Liberty would mean little to elders without recognition the right to construct arrangements for one's security without invasion by the

17 From Pitt's speech to the House of Lords on the Excise Bill.

State is fundamental *Snyder v. Massachusetts*, 291 U. S. 97 (1933).

State action

Entanglement

In *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961), the Supreme Court determined when the State is entangled with and approves actions of a private party, they are the State's.

Probate wrongly allowed the senior partner to participate in the hearing, as by Rule 1.7, he was not allowed to represent Mrs. Hubby; Probate refused to take up the motion to disqualify (32); and moved ahead with the "*voluntary*" petition, knowing a witness will testify Mrs. Hubby seemed not to understand what it was. The Court crafted the decree by dictation from the attorney who acted against Mrs. Hubby. (34)

The State entangled itself with the firm, and placed the power of the State behind the firm, to keep it in Mrs. Hubby's affairs.

Encouragement

"... a State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement....that the choice must in law be deemed to be that of the State." *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982)

By improperly awarding $50,000 of Mrs. Hubby's money to Day Pitney for defense of actions against her, in violation of estate law, Probate did more than

encourage. *The Court rewarded the firm.*

Probate held conflict of interest wasn't pertinent, contrary to law on conflict of interest, and refused to provide a hearing on Ben Hubby's petition to be named his mother's involuntary conservator for 5 ½ months to keep Ben Hubby from becoming Mrs. Hubby's guardian so he wouldn't be able to discharge Day Pitney.

Superior Judge *Hurley* gave Day Pitney a pass on a *prima facie* case of conflict of interest and harm done Mrs. Hubby. The Connecticut Supreme Court refused to allow Ben Hubby's appeal when it was manifest Appellate court committed *plain error* in dismissing on *lack of standing*, a pretext to protect Day Pitney.

Ultimate entanglement and encouragement

When the law does not work, such cynicism is created in the minds of the public, that one has to ask, why write law if the words are not to have effect?

It is courts that give breath and life to written law, to make it work in our everyday lives. But in the state of Connecticut, the state courts affirmatively decided to make law not work for a class of citizens in conflict with a favored law firm, which is the ultimate in entanglement and encouragement of the activities of Day Pitney.
State courts were so entangled with the fortunes of Day Pitney that they used their power and prestige to help the firm defeat rescue of their own client from wrong doing, and to keep the firm from being held accountable by law and Rules of Professional Conduct the courts have duty to enforce.

Thus, the actions of Day Pitney against Mrs. Hubby's freedom were actions of the State, in violation of the 14th Amendment. The State itself removed Mrs. Hubby's property without due process of law.

IV

THE DEPRIVATION OF DUE PROCESS

The state courts systemically denied due process affecting Mrs. Hubby's freedom and property.

Hearing and the right to be heard

"The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision-making when it acts to deprive a person of his possessions." *Fuentes v. Shevin*, 407 U. S. 67, 80-81 (1972).

Mrs. Hubby was not brought to the hearing on the disposition of her estate though doubt was raised as to her understanding of the petition she signed.

She was not represented by counsel looking after her interests when her property was taken because her attorney invaded her life to help somebody else.

In 16 months since Ben Hubby came to eradicate conflict of interest in his mother's legal representation, no factual hearing has been held on the issue.

Impartial tribunal

"The provision of an impartial decision maker is

an essential right in civil proceedings" *Goldberg v. Kelly*, 397. U. S. 254, 271(1970). By no stretch of the imagination was impartiality provided in this case.

Judge *McNamara* became a partisan by referencing the sworn evidence on Mrs. Hubby's broken stewardship as *junk*, refusing to take up the motion to disqualify Day Pitney and refusing to provide a hearing on Ben Hubby's petition for 5 ½ months

At every level, the courts refused to apply relevant law for the protection of a 99 year old elder injured by a powerful law firm with friends in the judiciary, such that fairness that justice were never possible.

No law supports rulings made

The provision of decisions on the record is a basic component of due process . "[T]he decision maker's conclusion . . . must rest solely on the legal rules and evidence adduced at the hearing. *Goldberg v. Kelly*, supra, at 271.

From Probate to the Connecticut Supreme Court, *no memoranda* of fact and law were furnished, presumably because *there is no law* authorizing rulings in one of the worst cases of conflict of interest found in a many states, as the intent was to take a 98 year old elder as a client to harm her interests.

Judge *McNamara* said that conflict of interest isn't pertinent, whereas, according to Connecticut law conflict of interest is *always pertinent* for the harm it can do to the client and the judiciary.

Judge *McNamara* knew Mrs. Hubby's level of competency to execute a document transferring her property to someone else's control was problematical. The evidence available on the day of the hearing was to effect Mrs. Hubby did not understand the petition that she signed, nevertheless Judge *McNamara* moved ahead.

To win at every level of the state courts, *Day Pitney did not need to bring any facts*, except one, to the effect that the firm and the senior partner were resigning in June 2007, when it looks like they did not.

CONCLUSION

Justice Robert Jackson had but one year of Albany Law School, learned by apprenticeship and practice; rose to the Supreme Court, and was named Chief United State Prosecutor at the Nuremberg War Crimes Trials, where he fought for the rule of law.

It is for the rule of law that Ben Hubby appeals to the United States Supreme Court, because Mrs. Hubby was withdrawn from the protection of law as her interests were in conflict with a law firm held in favor by the courts.

Although the State of Connecticut is known to provide a good standard of due process and protection by state law, it is difficult to see *in this case* where any law, any right, any fundamental element of due process was afforded Mrs. Hubby in about 16 months of litigation, except for Superior Judge *Gordon's* letting the motion to disqualify come forward.

Day Pitney must have fine lawyers but it is not good for Connecticut or the law for the scales of justice to tilt for a certain class of citizens. We have come too far since the adoption of the Fourteenth Amendment to substitute for the Black Codes another kind of code, based on politics, friendship or favor, resulting in the denial of equal protection of the laws.

The Supreme Court of Connecticut rendered the final judgment on the constitutional issues. For any other issue at a *trial de novo* before Superior Court, it is apparent Ben Hubby is not going to get justice in Connecticut. Unless the Supreme Court intercedes, this case is over, though the rule of law was mauled.

Because the Supreme Court will not allow the judiciary of a state to deny citizens protection by the Constitution, Petitioner comes to this Court for justice.

Mrs. Hubby is 99; the clock ticks, her breaths are precious. Ben Hubby requests the Supreme Court of the United States, in compassion, to grant the petition while Mrs. Hubby is with us, and to act for justice soon.

Petitioner requests the Supreme Court to reverse the order of the Connecticut Supreme Court and asks the Supreme Court to order the Supreme Court of Connecticut to immediately hear conflict of interest and fee return. And because of all of the judicial wrongs in this case, Petitioner requests the Supreme Court to maintain jurisdiction until the case is completed.

For the foregoing reasons, Ben Hubby respectfully requests the Court to grant his petition for certiorari.

Respectfully submitted, this 27 day of June, 2008,

Ben Hubby MD, Pro se
815 E 66th Street
Savannah Ga. 31405
Tel 912 352 1088
FAX 912 352 3556

Certificate of Service

Petitioner certifies that he has this day served counsel of record for respondent in this case his petition for writ of certiorari by placing same in the U. S. Mail, sent to counsel's address of record, to wit:

Mr. Allan Taylor Esq.
Counsel of Record
Day Pitney LLP
242 Trumbull St.
Hartford 06103

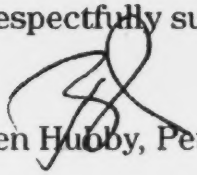
This 27 day of June, 2008,

Ben Hubby, Petitioner

Certificate on Compliance on Word Limitations

Petitioner certifies that this Petition complies with word limitations and that the word count is 6,223.

Respectfully submitted, this 27 day of June, 2008



Ben Hubby, Petitioner

APPENDIX A

Probate decree on transfer of Mrs. Hubby's estate

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, DISTRICT OF East Lyme
DISTRICT NO. 045
IN THE MATTER OF THE PETITION OF
Kingsley K, Hubby (07-0063)

FOR VOLUNTARY REPRESENTATION

CONSERVATOR OF PERSON
[Name, address, zip code, and telephone number.]
CONSERVATOR OF ESTATE
[Name, address, zip code, and telephone number.]
George Gallup
P.O. Box 346, Princeton, NJ 08542, (609)466-1216

record appears, on the petitioner's application for the appointment of a conservator of the estate.

PRESENT: Hon. Jeffrey A. McNamara, Judge

The Court having seen the above-named petitioner in person and having heard the petitioner's reason for seeking voluntary representation and having explained to him or her that the issuance of this decree will subject the petitioner and/or the petitioner's property, as the case may be, to the authority of the conservat or, after due hearing finds that:

Notice of hearing was given in accordance with the order of notice previously entered.

The petitioner resides or has domicile in this probate district, and jurisdiction of this matter appertains to this Court.

The petitioner has requested the appointment of a conservator of the estate.

The conservator named above has accepted the position of trust.

The conservator of the estate is excused by the petitioner from giving probate bond.

WHEREFORE IT IS ORDERED AND DECREED that:

The conservator(s) named above is/are appointed conservator of the estate of the respondent as indicated above.

The conservator of the estate shall immediately record a Notice for Land Records/Appointment of Conservator, PC-350, in the land records of each town where the respondent owns or has an interest in real property, as provided in C.G.S. __45a-658.

Two months from the date hereof be and the same is allowed the conservator of the estate within which to make a true and complete inventory of all property of the petitioner and return the same under oath to the court. (C.G.S. __45a-655)

DECREE/APPOINTMENT OF CONSERVATOR
PC-361

APPENDIX B

Ben Hubby's Petition to Connecticut Supreme Court

: SUPREME COURT

IN THE MATTER OF KINGSLEY HUBBY :
STATE OF CONNECTICUT
AC: 29253

:

JANUARY 31, 2008

APPELLANT'S PETITION FOR CERTIFICATION TO APPEAL

Ben Hubby, Appellant pro se
815 E 66th Street Savannah, Ga. 31405
T: 912-352 1088 F: 912 352 2556

Mr. Alan Taylor for Day Pitney at 29 South Main Street West Hartford CT 06107 T: 860 313 5700 FAX 860 313 5701

Mr. Kenneth McKeever for Mrs. Hubby at P.O. Box 514 81 Pennsylvania Ave. Niantic CT 06357 T: 860 739 6296; FAX 860 739 2149

Statement of question presented

The question is a whether the son of a 98 year old elder with incompetence to manage her legal and business affairs – the son also a petitioner to be his mother's involuntary conservator – has standing to move

to disqualify the attorney and his firm, who took his mother as a client to harm her interests for the benefit their other client.

Statement of the basis for the extraordinary relief of certification

The decisions of the courts below are not in comportment with published cases on conflict of interest and standing in Connecticut, as Ben Hubby was allowed to challenge his mother having been wrongfully manipulated out of her attorney-client relationship with Mr. Granville Morris to become a client of Mr. Dudley, representing the man with whom Mrs. Hubby was in extreme conflict.

This case is of significant public interest as the vulnerable elderly must be protected from improprietous lawyering. The public's interest is expressed in Section 45a-648 allowing *any person* to petition to be an involuntary conservator of an impaired elder to make sure the elder is protected.

At the hearing on January 9, 2008, a justice of the Appellate Court announced he is a close personal friend of Mr. Allan Taylor, Senior Partner of Day Pitney, yet the Clerk's Office did not reply to Ben Hubby's request as to the justices identity, so he could craft a motion to recuse. In a memorandum, Ben Hubby asked that a panel of judges without a personal relationship with members of Day Pitney decide his appeal, but the memorandum was sent back. Ben Hubby filed a motion for reconsideration. The clock moves to the deadline of filing in the Supreme Court, requiring one copy to Superior Court to be stamped, returned, and then filed before February 12, 2008, which may not be possible if the AC decision does not arrive soon, therefore Ben Hubby files his petition now.

Three courts gave a pass to Dudley and Day

Pitney for what ought not be allowed for the protection of the elderly. Because of what happened to Mrs. Hubby was so wrong and violative of the interests of the elder community; and the ruling departs so far from the usual course of judicial proceedings, supervision by the Supreme Court of the State of Connecticut is called for.

Summary of the Case

The facts

In December, 2005, recognizing she was not able to manage her affairs, Mrs. Kingsley Hubby, age 98, granted POA to her eldest son, NM[1], to manage them for her. NM's attorney, Mr. Dudley of Day Pitney, was hired in December 2005 and crafted the POA granted NM by Mrs. Hubby. Frustrated with the head of Mrs. Hubby's home care team (Marcia Dubreuil), he sent Marcia an e mail in March, 2006, threatening to send Mrs. Hubby to a nursing home unless Marcia did his bidding. Frightened, Mrs. Hubby sought protection from attorney Granville Morris, who helped her revoke NM's POA and to craft a "joint" POA , granting NM power only shared with his sisters. NM and Dudley strategized to help NM to recover power.

Dudley became Mrs. Hubby's lawyer too

As he perceived no adversity in the interests between NM and his mother, Dudley stated he was free to meet Mrs. Hubby in June, 2006 to discuss an "estate matter" and become her attorney. On 7/3/06, he received from Mr. Morris a copy of a letter signed by Mrs. Hubby on 4/13/06, revoking NM's individual POA and a copy of the joint POA dated 4/13/06, allowing NM power only as shared with his sisters.

---

1 Because Mrs. Hubby's eldest son has been ill, Appellant asks in compassion that he be allowed to use his brother's initials

Actions after Mrs. Hubby became Dudley's client

Dudley had her dismiss Mr. Morris and did not tell the sisters – Kinny and Alison – they were granted POA over their mother's affairs, as on Ben Hubby's inquiry who had POA, Kinny Hubby Gallup replied on 12/31/06 that neither she nor her sister had POA, though granted to them eight months before.

Describing himself as a "*narrow technical advisor*" to Mrs. Hubby, Dudley stated he kept NM's independent POA in force along with the shared POA, though Mrs. Hubby revoked NM's POA in writing. He followed with a letter to BH, enclosing NM's sole POA, signed by Mr. Hubby 12/12/05, and the joint POA signed on 4/13/2006, stating these were both in force. In the spring of 2007, Probate Court, on application by Mr. Gallup—in alliance with Dudley and Day Pitney – removed $50,000 from Mrs. Hubby's estate to pay Day Pitney for defending Dudley's activities. After the hearing before Appellate Court on 1/9/08 Day Pitney Senior Partner, Mr. Taylor, indicated to Ben Hubby this case will be decided by something other than law and facts which Ben Hubby "wouldn't understand."

The proceedings

Mrs. Hubby's stewardship broken from chaos including conflict of interest in her representation, Ben Hubby petitioned to be named her involuntary conservator. A petition came from the alliance between Dudley and Mrs. Hubby's son-in-law, Mr. Gallup, as voluntarily coming from Mrs. Hubby, naming Gallup conservator of her estate, yet the witness states Mr. Hubby didn't understand what the petition was when she signed it. Ben Hubby moved to disqualify Dudley and his firm, denied by Probate Court, refusing to provide a hearing on his involuntary petition for almost 6 months, by which time he moved for a *trial de novo* on all issues in Superior Court. The attorney

representing Day Pitney informed Judge Gordon on 7/2/07 Dudley was resigning from work on Mrs. Hubby's estate. Judge Gordon allowed the motion to disqualify the firm to proceed, denied by Judge Hurley on 9/10/07. Ben Hubby's appeal for disqualification & fee return was dismissed by Appellate Court on 1/10/08 for lack of standing, relying on *Graham v. Estate of Graham* 2 Conn. 252 (1984). Hired by Mr. Gallup to do estate work for Mrs. Hubby, attorney John Ivimey notified Ben Hubby in the week of January 14, 2008, that Dudley & Day Pitney are still involved in Mrs. Hubby's affairs.

Argument

[A]

Conflict of interest prohibited Dudley from representing Mrs. Hubby. Dudley can't maintain he saw no adversity between the interest of Mrs. Hubby and her eldest son, because he met Mrs. Hubby in the fire-storm of conflict arising after his client threatened Mrs. Hubby's security.

As NM's interest was to re-gain power lost on the intercession by Mr. Morris; and, as Mrs. Hubby's interest was for NM not to have his power back, Dudley should have known he was forbidden to represent two clients with adverse interests. *Westport Bank and Trust Co. v. Corcoran, Mallin and Aresco* 221 Conn. 490, 498 (2002). The only way an attorney could represent these two clients was to sacrifice the interest of one for the benefit of the other, which is exactly what Dudley did.

Dudley's purpose in taking Mrs. Hubby as a client is seen by what he did when she became his client. He kept NM's power of attorney in force, though Mrs. Hubby legally revoked it. He didn't tell the two sisters they had shared power of attorney with NM, so they couldn't restrain him. Dudley pushed Mr. Morris out of the way, so he could take control of Mrs. Hubby's POA arrangements to retrieve power for NM. None of these

actions could have been properly taken by a *narrow technical advisor* on estate matters.

[B]

Unable to act for herself, Mrs. Hubby needed someone to act for her. Mrs. Hubby has been an exhibited painter at the Lyme Museum and solved London Times Crossword puzzles, but in 2005, she recognized she couldn't manage her affairs and turned them over to NM. If, in the summer of 2006, Mrs. Hubby had her faculties, she would have known it didn't make sense to leave a protective client-attorney relationship for one with an attorney representing the man whose POA she just revoked because his threat frightened her.

As documented by uncontroverted affidavits, Mrs. Hubby's abilities were in steady decline since December 2005. In Paragraph 2 of Ben Hubby's 5/24/07 affidavit, close to the time he moved to disqualify Dudley and Day Pitney, Mrs. Hubby was unaware Dudley wasn't permitted to represent her; unaware there was confusion as to who had POA; and unaware Dudley didn't obey her revocation of NM's POA. In Paragraph 19, it's shown the Gallup's offered a letter to Probate Judge McNamara at the hearing 4/03/07 written by Mrs. Hubby, stating she hoped Dudley could remain her lawyer because he did a good job.

As Mrs. Hubby wasn't aware of what occurred in her legal representation, she couldn't have known if Dudley did a good job. The letter was manifestly dictated to an incapable elder to steer the outcome of a judicial proceeding to keep in the elder's life an attorney who deliberately harmed her. Mrs. Hubby being so wrongly used, obviously needs someone to speak <u>for</u> her interests.

[C]

The ruling departs from the usual course of judicial proceeding and sanctioned such a departure

from lower courts as to call for the Supreme Court's supervision

(i) The purpose of Sec 45a-648 – to gain protection for elders like Mrs. Hubby – was defeated by Appellate Court's holding that the only person in Mrs. Hubby's life who perceived conflict of interest, must be kept from rescuing her.

This violates public policy expressed in Sec. 45a-648, providing standing to any person to come to court for protection for an impaired person for his/her protection. During the 5 ½ months Probate denied a hearing on Ben Hubby's petition, the legislature couldn't have intended that he ought not tackle the hijacking of the impaired persons legal instruments.

(ii) The only Case given to justify the ruling dose not apply to the facts, *Graham v. Estate of Graham* 2 Conn. 251 (1984), where Mrs. Edwina Graham, whose estate was under conservatorship of a bank, temporarily lost capacity from the side effects of medications. On her complete recovery she approved the conservator's final statement. On appeal the court would not let her son challenge, because of lack of aggrievement. Unlike Mrs. Graham, Mrs. Hubby has not recovered lost capacities; rather they've been in continual decline.

The case that applied to Mrs. Hubby's circumstances is *Guilletti v. Guilletti* 65 Conn. App. 813 (2001), concerning the elder Mr. Guilletti, opportuned to sign documents prepared by his attorney son that the senior Mr. Guilletti thought provided equitable distribution of his property. The documents actually authorized distribution that favored his two sons over his daughters.

Since the spring of 2006, because of her incapacity, Mrs. Hubby – like Mr. Guilletti – was easily

manipulated to sign documents against her wishes and interests; and did not have the wherewithal to protect her client-attorney relationship from being invaded by Dudley, in violation of the RPC.

It is erroneous to hold Ben Hubby's does not have standing to challenge his mother's choice of Dudley and Day Pitney because Mrs. Hubby did not choose Dudley and Day Pitney to gain security from the threat that frightened her, she chose Granville Morris. While Mrs. Graham's approval of the conservator's statement was freely and competently made, Mrs. Hubby's irrational decision to switch from Morris to Dudley was opportuned by an attorney intent on nullifying her legal protections. The very thing Dudley took advance of – Mrs. Hubby's inability to protect herself from being wrongly opportuned – gave Ben Hubby standing to challenge Dudley and Day Pitney's representation, because the purpose of Sec 45a-648 is to allow any person to come to court on behalf of an impaired person to move the judicial machinery for that person's protection.

It's not Ben Hubby's fault Judge McNamara refused to grant a hearing on his petition for the next 5 ½ months. He still had to try to straighten out the mess in his mother's life, which couldn't be done without addressing conflict of interest, as Mr. Dudley, who manipulated Mrs. Hubby's POA instruments, was in the center of the disorder. A party can invoke jurisdiction of the court if he has a real interest in the cause of action or in the subject matter of the controversy *Goodyear v. Discala* 269 Conn. 507, 511 (2004). Ben Hubby had both.

(iii) The ruling does not recognize trial courts have power to disqualify attorneys for conflict of interests *sua sponte.*

Subject matter jurisdiction is found when courts

have competency to entertain the action. *Monroe v. Monroe* 177 Conn. 173 (1979), citing *Lacks v. Lacks* 41 N.Y.2d 71, 75 (1976). Trial courts have "...authority to regulate attorneys and the duty to enforce standards of conduct..." *State v. Jones* 180 Conn. 443, 448 (1980), and discretion to disqualify attorneys for conflict of interest. *State v. Jones*, supra. Competent to decide conflict of interests cases, trial courts have subject matter jurisdiction and can proceed on the case at hand. *Amodio v. Amodio* 247 Conn. 724, 727-8 (1999). On this case, Probate Court and Superior Court could exercise inherent power to disqualify Dudley and Day Pitney *sua sponte* for conflict of interest and could come to Mrs. Hubby's aid, but did not, which Appellate Court permitted.

(iv) In the courts below having allowed nullification of Mrs. Hubby's legal instruments, violation of due process and denial of remedy to Mrs. Hubby, intervention by the Supreme Court is warranted. Given action by state courts is regarded by the Supreme Court as action of the State under the 14th Amendment – *Shelley v. Kraemer* 334 U.S. 1 (1948); given Superior Court approved Probate's rewarding Day Pitney for defending Dudley with $50,000 of Mrs. Hubby's money, when he was not allowed to represent her; given the close personal friendship between Day Pitney Senior Partner Alan Taylor and a justice of the Appellate Court that should have caused recusal; given the courts provided protections for one of Connecticut's most powerful law firms rather than for the 98 year old vulnerable elder injured by the firm; given Senior Partner Taylor's indicated his informed belief this case is to be decided by a factor other than law, a special relationship appears to exist between the courts and Day Pitney LLP underlying the firm's acting against Mrs. Hubby without restraint by law, such that the

Probate Court, for example, became enmeshed with the actions of Mr. Dudley and Day Pitney by a) wrongly allowing Dudley & Day Pitney to participate in the hearing though representing the man who threatened Mrs. Hubby's security; b) refusing to take up the motion to disqualify, insisting instead that Dudley, who threw over Mrs. Hubby's legal protections, remain in her affairs; c) crafting the order with jottings from Dudley who should not have been there in the first place; d) moving ahead with the petition brought as "voluntary" by Dudley, though the Court knew a witness was ready to testify Mrs. Hubby didn't understand the petition that she signed, so it couldn't have been voluntarily brought. *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961) holds when a state is entangled with and approves actions by a private party, those actions become the state's. Probate knew all the details but found nothing wrong in the activities of Dudley against Mrs. Hubby's interests and legal protections, and thus put the seal of the state on those actions, though the right of a person to be left alone from state intrusion must be ranked as a fundamental right, *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1933).

In *DeShayney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989), Justice Rehnquist held if young Joshua was in state custody when beaten by his father, state action would be found in the beating. When Probate took jurisdiction over Mrs. Hubby's estate and refused to disqualify the law firm that injured her interests, the state failed to make proper decisions about her estate and to take proper care of it, analogous to the responsibilities of custody.

Respectfully submitted, this 1st day of April, 2008
Ben Hubby, Appellant.

APPENDIX C
Petitioner's sworn facts before state officer within his appeal to Superior Court[2]

2 Petitioner is aware his statement of facts is not in the classic form of an affidavit, but the facts here are sworn before at state officer who notarized the document at penalty of perjury. These sworn facts have been attested throughout this case since early May, 2007 and none have been contraverted.

STATEMENT OF FACTS

1

My mother, Kingsley Hubby, age 98, lives in East Lyme. She's required 24 hour supervision, is alert, sprightly but has deteriorating recent memory.

2

In recent conversations she made it clear to me that she doesn't understand that Dane Dudley should not have become her lawyer because of conflict of interest; that there has been confusion in the family as to who has power of attorney; that Dudley did not obey her instruction to cancel her eldest son's power of attorney, as he threatened her; she doesn't know her daughters were kept from learning they were granted durable POA on 4/13/06.

3

My older brother, Nick Hubby, has had sole power of attorney over my mother's affairs and is trustee of her estate. His POA was granted in December, 2005, crafted by Mr. Dudley.

4

When frustrated, Nick visits volcanic, yelling upon my mother, her team of home helpers, me; occasionally my sister Kinny & husband George. The most recent – just before Christmas '06. Afterwards, it takes my mother two days to recover from these events.

5

In March of '06, in an E mail to the head of my mother's care team, Marcia Dubreiul, Nick threatened to send Mom to a nursing home against her will, because he was angry at Marcia. The E mail was shared with my mother. About this time, Nick had the house appraised, which frightened her.

After consulting attorney Granville Morris, my mother cancelled Nick's POA.

6

In an E mail on 3/29'06, my brother said Mr. Dudley advised the difficulty could be managed with "*two powers of attorney...written the smart way.*"

7

When Dudley met mother in June, 2006, she became his client too, without warning or a waiver. On July 3rd 2006, Dudley received from Mr. Morris –identifying himself as my mother's lawyer—a letter signed by Mrs. Hubby 4/13/06 revoking Nick's POA; a copy of a POA dated 4/13/06 granted by her jointly to Nick, Kinny and Alison, allowing action by the three only in concert.

8

Opposing my motion to disqualify, Dudley provides a letter from Mrs. Hubby to Mr. Morris dated 7/7/06; "I appreciate your assistance with this single piece of work... Please forward all of my files ... original and copies, to my attorney Dane Dudley ..."

9

On 12/25/06 Nick said he wasn't able to keep up with my mother's finances; household expenses with 24 hour supervision was running about $250,000/year and was rising dramatically—according to Nick's statement. Nina, an accountant assistant was writing checks without supervision, & there were unaccounted for expense, etc. Nina refused to provide records requested in the family.

10

On December 26, 2007 I provided a six page plan to bring all of my mother's affairs in order which included CPA oversight, written contacts for the home helpers showing duties and who they are accountable for, etc and sent this to Nick. When I called to discuss, he yelled "...we don't have any power...*Dane Dudley is in control of everything!*"

11

My sisters refused to discuss my concerns for my mother's welfare.

12

Kinny's husband, George Gallup, is a member of our family. Over many years, I've learned he and Kinny are so united on family issues that, on these, each speaks for the other.

13

When I sought clarity on who had POA for my mother, Kinny replied by E Mail December 12/26/06— stating Nick and my mother share POA, neither Kinny nor Alison do.

14

I relayed Nick's financial information to Ron Baude, CPA, who does my mother's taxes. His reaction: *"Mrs. Hubby's finances are completely out of control."*

15

Because of abuse/threats against my mother & her helpers, disarray in her finances, confusion about who's in charge, and refusal of my sibs and Gallup to improve things, on 1/05/07 I filed a petition in Probate Court on January 5, 2007. In my petition I listed the first ten things upon taking office—amongst them: **a)** have staff sign contracts specifying duties, **b)** install a time clock to account for hours, **c)** have Mrs. Hubby's household finances under the control of CPA Ron Baude tasked to take over all check writing, accounts payable and receivable and institute all appropriate financial controls; **d)** immediately terminate the relationship between Mrs. Hubby and Mr. Dudley who simultaneously represents Nick Hubby and Mrs. Hubby. Gaining attention of my sibs and Gallup, I temporarily laid the petition aside in the hopes of family unity behind a comprehensive plan for my mother's welfare to include the provisions above.

16

George Gallup called me on Feb 8th, '07 stating my mother does not need a conservator & there aren't serious problems in her life. He wave aside my concerns, including verbal abuse of my mother.

17

On 2/9/07, when I was up in Connecticut, my attorney, Gene Cushman, called, saying Dane Dudley alleged that I'd upset my mother the night before, such that I ought not visit her this day. I called out to the house and was told by Charon Wilson, one of the home helpers, that my mother was asleep, she hadn't spoken to Mr. Dudley, but my brother called and was aware I was up in Connecticut. Charon said, my mother indicated the night before that she was looking forward to my return in the AM.

18

Later that day, my mother told me she does not want a guardian.

19

When I met Dudley at Mr. Cushman's office, I said his relationship with my mother is impermissible, as he also represents a client who threatened her. Dudley's response: "People are always threatening to send their elders to a nursing home... I'm a narrow *technical advisor*" to Nick and Mrs. Hubby.

20

At the conference, Dudley said after he met my mother, *he kept Nick's independent powers in force.* Mr. Cushman replied this violated my mother's instruction and defeated the purpose of creating shared POA. Dudley said he'd make changes.

21

Defending his representation, Dudley did not indicate my mother was warned of the dangers of Dudley being her attorney. He said he couldn't advocate a

family agreement unless it stipulated his continued employment in our family. *I'm fighting for my job,"* he said.

22

On March 3, 2007 I received an E mail from Marcia Dubreiul, indicating she's been threatened by a member of our family.

23

On March 6, 2007, Dudley mailed me two POA instruments: a) Nick Hubby's independent POA, signed by my mother on December 12, 2005, crafted by Dudley; b) the joint POA, shared amongst Nick, Kinny & Alison, signed by my mother on April 13, 2006. Mr. Dudley's cover letter states these two power of attorneys are *both in force.*

24

In mid March, Kinny called to discuss the plan I put forward to improve my mother's welfare. Part of the plan was to rope in Dudley and bring in a social worker to investigate and report – when necessary – any abuse or behavior creating discomfort in the household detrimental to my mother's peace of mind. During this conversation Kinny angrily shouted, *It is abusive to say there's conflict of interest."* Mr. Gallup and his wife have continually opposed my quest to end legal improprieties in my mother's life and to get to the bottom of who's had POA.

25

At this time, I filed my Motion to Disqualify Dane Dudley and his firm, Day Pitney, from further representation of Mrs. Hubby & her estate. The case number assigned to the motion was the same case number assigned to Mrs. Hubby's petition 07—0063 The motion was docketed to be heard April 3rd in East Lyme Probate Court.

26

Upon my insisting that my mother's legal representation had to be changed, Gallup and my sibs withdrew from talks and put forward a petition in Mrs. Hubby's name proposing Gallup as her conservator.

27

On or about March 16th, 2007, Marcia Dubreuil called, saying when the petition arrived from Dudley's office, my mother did not understand what it was and said, "What's this all about?" Other than the currier, no person, such as a notary, was there to go over the document with my mother.

28

On March 28, 2007, I wrote the Probate Court to activate my petition, requiring by statute several days beyond April 3rd for a hearing on my petition.

29

On 3/29/07 I E mailed George, Kinny and Alison, attaching my motion to disqualify Dudley, pointing out **(a)** when Kinny said on 12/26/06 that neither she nor Alison had POA, *they'd actually had it for 8 months;* **(b)** It's disturbing they were learning they had POA almost a year after having been granted it, as they'd not been told by Dudley; and **(c)** contrary to my mother's instruction, Dudley didn't cancel Nick's independent POA. I asked George, Kinny and Alison to seek advice from an independent attorney about these improprieties to understand Dudley's representation for my mother.

30

At the hearing April 3rd,07 Judge McNamara said he was going to appoint a conservator that day, precluding Ben Hubby being considered, even on the showing Gallup is not qualified. He referred to facts regarding problems of my mother's life as *"junk"* and said he would not hear my motion to disqualify, because there was no case before the Court.

31

I replied I wished the Court to hear my motion when the Court took jurisdiction on Mrs. Hubby's petition.

32

The Court took jurisdiction but refused to hear the motion because "*conflict of interest is not pertinent*" as Mr. Gallup is free to choose another attorney.

33

Whereupon Gallup told the Court he is satisfied with Dudley's representation and sees no need to receive independent advice on conflict of interest and Dudley's activities. Handed a copy of Marcia Dubreuil's E mail, showing she's been threatened within our family, Gallup said, "I see no problems" in my mother's life.

34

The Court ignored the motion, made no ruling on it and moved onto appointing Gallup, allowed Dudley to participate in the process – over appellant's objection – and took jottings from Dudley. The Court said Gallup's obstructing repair of Mrs. Hubby's stewardship did not matter.

35

Kinny Gallup slid a note to Judge McNamara, I was not notified of the contents nor sent a copy, so I wrote the Clerk asking for one. The document is a letter from my mother stating she's 'completely satisfied with my representation by Dane Dudley... "I am confident...my interests have been served...I am grateful to...Nick, for bringing us together...I have enjoyed my meetings with Mr. Dudley, and look forward to continuing our work together."

36

On April 12, 2007 I wrote my mother telling her improprieties have occurred her legal representation and expressing her need for a "second opinion" by an attorney independent of Dudley.

37

After his appointment, I wrote Gallup on 4/12/'07 requesting he take my mother to an attorney independent of Dudley for advice on improprieties in Dudley's performance.

38

Gallup replied he cannot; and there's no need, as Mrs. Hubby is satisfied with Dudley.

39

I wrote Gallup on April 17th, stating the most appropriate attorney my mother should be taken to is "... the attorney she consulted in April, 2006, who advised her on how to be protected from Nick's threats..." – who I've subsequently learned is Mr. Granville Morris.

40

On May 8, 2007 Dudley FAXED a message to Ben Hubby stating that there have been no new POA arrangements or revocations of prior documents since early March, 2007. But Dudley, wrote, there has been a misunderstanding; there is only one POA in force, the "joined" POA amongst Nick and his two sisters.

41

By FAX on May 9, 2007, (1) Gallup identified Mrs. Hubby's lawyer as Dane Dudley, for her estate; (2) the attorney for Gallup as conservator is Kenneth McKeever; (3) the only accountancy for Mrs. Hubby's household finances is under the supervision of Nina, still being employed; Ron Baude is doing Mrs. Hubby's taxes only. Gallup states, "Granville Morrris... was hired to write codicil only Kinny talked to you about this in a conversation Feb, 2006... (crossed out) Dane Dudley was the lawyer for KKH at that time." (George Gallup FAX May 9, 2007).

In a follow up FAX Marked May 11 (actually sent on 10th), 2007, Gallup states, "The need for the codicil was

the result of a misunderstanding... It was to deal only with the disposition of the house... The dealings of Morris were between him, Kinny and Alison... What he perceived his role was in subsequent correspondence was soon clarified and your mother has complete confidence in the work Dane has accomplished." (George Gallup letter to Ben Hubby FAX 5/10/07);

All of the facts set forth above are true and correct to the best of my knowledge. Sworn to and subscribed _____ before me this _____ day if _____ 2007.

APPENDIX D

Mrs. Hubby letter of 4/13/06 revoking NM's sole power of attorney she signed on 12/12/05

KINGSLEY K. HUBBY
249 Old Black Point Road
Niantic, Connecticut 06357

April 13, 2006

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND REGULAR MAIL

Mr. Nicholas M. Hubby
P.O. Box 1826
Cape Neddick, ME 03902

RE: Powers of Attorney to Frank W. Hubby, III and to Nicholas M. Hubby

Dear Nicholas:

I am writing to you concerning the Statutory Durable Power of Attorney dated January 14, 2000 from me to your father and to you severally. I am also writing to you concerning the Power of Attorney dated December 12, 2005 from me to you. I hereby revoke both of these Powers of Attorney. Therefore, you are no longer permitted to act as my Agent under either of these Powers of Attorney.

As the Principal, you should return to me immediately any originals of the Powers of Attorney or copies thereof. In addition, please provide me with the names and addresses of any parties to whom you have given an original or copy of these Powers of Attorney.

I am enclosing for your file a copy of a new Statutory

Durable Power of Attorney that I signed on April 13, 2006. If you have any questions, please contact me.

Very truly yours,

Kingsley K. Hubby

Enclosure

APPENDIX E

Mr. BDD's letter of 3/6/07 stating the power of attorney Mrs. Hubby signed on 12/12/05 is still in force

March 6, 2007

PERSONAL & CONFIDENTIAL

Ben Hubby, M.D.
815 East 66th Street
Savannah, GA 31405

Dear Dr. Hubby:

As you requested in your March 5, 2007 letter, I have enclosed a copy of the Power of Attorney that your mother signed on December 12, 2005 and the Power of Attorney that your mother signed on April 13, 2006, which should confirm for you the power of attorney arrangements currently in effect for your mother. I did not send these documents via facsimile as I could not reach you by telephone and did not know whether the fax machine listed on your letter was personal and private to you.

Very truly yours,

B. Dane Dudley

BDD/ljm
Enclosures
cc: Mrs. Frank W. Hubby
Eugene C. Cushman, Esq.

APPENDIX F

Page 9 of Day Pitney's defense of the senior partner before Statewide Grievance Committee.

Footnote 15, claiming $50,000 in expenses was run up opposing Ben Hubby's activities for his mother

did not want Complainant, and that she was completely lucid and clear of mind on these decisions.

Complainant appealed the Probate Court orders to the Superior Court. The Firm initially appeared in that action for Mrs. Hubby. In a discussion with the conservator and his counsel, however, Dudley recommended that the conservator's counsel replace Dudley as counsel for Mrs. Hubby in the hope[14] that by eliminating the target of Complainant's apparent fixation from the case, the expense to Mrs. Hubby caused by Complainant could be reduced.[15] Dudley also recommended that any further estate planning work for Mrs. Hubby be done by some else, [16] pointing out that because of Complainant's attacks on him, he would not be able to advise Mrs. Hubby should she desire to carry out her intent, reported to Dudley by various family members to alter her documents adversely to Complainant. When Dudley was advised by counsel for the conservator that Dudley's suggestion that he withdraw had been accepted, he sent a confirming letter to Mrs. Hubby. (Ex. 22.) In response, he received on June 13 the following e-mail message from the account of Marcia Dubreuil, a member of Mrs. Hubby's household staff:

114

14 Since Complainant has taken to instructing counsel for the conservator in Complainant's views of counsel's proper role, see Ex. 21, and continues too pressure his "claims" in all available for a, it appears that this hope is likely to be disappointed

15 In December of 2006, the Firm billed Mrs. Hubby $2,766.50 for the estate planning work and additional consultations with her between June and December. On May 15, 2007, the Firm billed her $24,393.31. Most of that billing consisted of time spent attempting to resolve the various disputes created by Complainant and preparing and prosecuting the motion for appointment of a voluntary conservator necessitated by Complainant's disruptive activities. The Firm did not bill Mrs.

Hubby for time spent responding to the motion to disqualify, nor has it nor will it bill Mrs. Hubby for the time spent in this proceeding. The Firm's time records reflect that Complainant has cost the Firm well in excess of $50,000.

16 Dudley continues to represent Nick in his capacity as co-trustee of his father's trust. Since December of 2005, The Firm has billed approximately $35,000 for work on that several million dollar estate.

APPENDIX G

Probate Court Decree 6/12/2007 - Item D, ordering removal of $50,000 from Mrs. Hubby's estate for the payment of attorney's fees

DECREE
STATE OF CONNECTICUT
RECORDED:
PC-160 REV. 3/03

COURT OF PROBATE

COURT OF PROBATE, DISTRICT OF East Lyme
DISTRICT NO. 045
ESTATE OF/IN THE MATTER OF
Kingsley K. Hubby (07-0063)

At a court of probate held at the place and time of hearing set by the Court on the petitioner's application for ADDITIONAL WITHDRAWALS FROM THE KINGSLEY K. HUBBY REVOCABLE TRUST DATED JANUARY 14, 2000

PRESENT: Hon. Jeffrey A. McNamara, Judge

After due hearing, THE COURT FINDS that:

Sworn return is made that notice of the date and time set for said hearing has been given by virtue of Notice of Hearing dated May 24, 2007.

And it is ORDERED AND DECREED that:

The Decree of April 3, 2007, authorizing the Conservator to withdraw the sum of up to $20,000.00 per month from Mrs. Hubby's account at U.S. Trust Company of America is modified as follows:

A. The withdrawal of $20,000.00 per month for Mrs. Hubby's support shall continue;

B. The Conservator is authorized to withdraw sufficient funds to pay Mrs. Hubby's federal and Connecticut estimated quarterly tax payments as may be determined from time to time;

C. The Conservator is authorized to withdraw sufficient funds to pay

Mrs. Hubby's Town of East Lyme real estate/personal property taxes as may be determined from time to time;

D. The Conservator is authorized to withdraw the sum of $50,000.00 for payment of past due and future legal fees arising out of The Matter of Kingsley K. Hubby before the East Lyme Probate Court and the case of *Hubby v. Hubby* pending in New London Superior Court;

E. An Inventory shall be filed on or before July 2, 2007.

Dated at Niantic, Connecticut, this 12th day of June, 2007.

.....

Jeffrey A. McNamara, Judge

DECREE
PC-160

APPENDIX H

Order of Appellate Court on 1/10/08

STATE OF CONNECTICUT
APPELLATE COURT

A.C. 29253

BEN HUBBY

v.

KINGSLEY K. HUBBY ET AL.

JANUARY 9, 2008

DISMISSAL ORDER

AFTER A HEARING AS TO WHY THE PLAINTIFF'S APPEAL TAKEN FROM THE SUPERIOR COURT'S DENIAL OF THE PLAINTIFF'S MOTION TO DISQUALIFY HIS MOTHER'S COUNSEL SHOULD NOT BE DISMISSED BECAUSE THE PLAINTIFF LACKS STANDING TO SEE DISQUALIFICATION OF HIS MOTHER'S COUNSEL. SEE *GRAHAM V. ESTATE OF GRAHAM*, 2 CONN. APP. 250 (1984), IT IS HEREBY ORDERED THAT THE APPEAL IS DISMISSED.

BY THE COURT,

CARL D. CICCHETTI
ASSISTANT CLERK-APPELLATE

NOTICE SENT: JANUARY 10, 2008
DAY PITNEY, LLP
KENNETH M. MCKEEVER, P.C.
BEN HUBBY, PRO SE
KINGSLEY H. GALLUP, PRO SE
HON. ROBERT A. MARTIN, PJ

(HURLEY, J. DECEASED)
CLERK, JD OF NEW LONDON (CV07 4007105S)
PAC

38S/72650

APPENDIX I

Order of the Connecticut Supreme Court of 4/21/08

SUPREME COURT

STATE OF CONNECTICUT

NO. PSC-07-0269

Ben Hubby

v.

Kingsley K. Hubby et al.

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the plaintiff for certification to appeal from the Appellate Court [AC 29253], it is hereby ordered that said petition be, and the same is hereby denied.

Palmer, J., did not participate in the consideration or decision of this petition for certification.

BY THE COURT,

ALAN M. GANNUSCIO
ASSISTANT CLERK-APPELLATE

Dated: 4/21/2008

Notice sent: April 21, 2008
Clerk, Superior Court, New London, CV07 4007105
Clerk, Appellate Court
Reporter of Judicial Decisions
SAO
Day Pitney, LLP
Kenneth M. McKeever, P.C.
Ben Hubby, pro se
Kingsley H. Gallup, pro se

Ben Hubby, pro se, in support of petition.

ct

APPENDIX J

Mr. BDD's and Day Pitney's resignation on 6/14/07

AFFIDAVIT OF ATTY. B. DANE DUDLEY

The undersigned being duly sworn deposes and says:

1. I am an attorney-at-law duly licensed to practice in the State of Connecticut and a member of the law firm, Day Pitney LLP, with an office in West Hartford, Connecticut.

2. I and Day Pitney represented Mrs. Kingsley K. Hubby in proceedings regarding her Application for Voluntary Representation in the East Lyme Probate Court.

3. Those proceedings have been concluded, and Mrs. Hubby's Voluntary Representative has be appointed.

4. Neither I nor Day Pitney expect to perform any further legal services for Mrs. Hubby.

_____

B. Dane Dudley

Subscribed and sworn to before me this 14th day of June, 2007, at West Hartford, Connecticut.

_____

Notary Public

APPENDIX K

Probate Court decree November 16, 2007 [3]

3 Judge McNamara indicates that Mr. BDD, the senior partner, is still involved, referring to his firm by its prior name

NOTICE RE: PROBATE
STATE OF CONNECTICUT
RECORDED:
APPLICATION
PC-236C NEW 10/98 COURT OF PROBATE

COURT OF PROBATE, DISTRICT OF East Lyme
DISTRICT NO. 045

IN THE MATTER OF
HEARING REQUEST DEADLINE:

December 03, 2007
Frank W. Hubby, III (06-0099)
DECREE ENTRY DATE:

December 05, 2007

APPLICATION FOR:
Allowance of the Final Account of the fiduciary and an order of distribution of said estate

FIDUCIARY [Name, address, zip code, and telephone number] Executor
Kingsley K. Hubby, 2449 Old Black Point Road, Niantic, CT 06357, (860) 313-5752

ATTORNEY FOR FIDUCIARY [Name, address, zip code, and telephone number]
B. Dane Dudley, Day, Berry & Howard, LLP, 29 South Main Street, West Hartford, CT 06107, (860) 313-5752

NOTICE

The application identified you as a person having an interest in this matter.

Accordingly, you are hereby given NOTICE that this Court will, on the above Decree Entry Date, issue a decree GRANTING THE APPLICATION specified above, unless an interested party files an objection and/or request for a hearing.

YOU HAVE A RIGHT TO A FORMAL HEARING ON THIS MATTER IF YOU REQUEST ONE. YOU CAN EXERCISE THIS RIGHT BY ADVISING THE COURT, IN WRITING, OF YOUR DESIRE FOR A HEARING ON OR BEFORE THE "HEARING REQUEST DEADLINE" SHOWN ABOVE. The attached form may be used for this purpose.

If no formal hearing is requested, the entry of this Decree by this Court will be done automatically. The Court will, on the Decree Entry Date listed above, issue a Decree, which will grant the above application. If a formal hearing is requested, then you will receive notice of the hearing date.

Your attendance in court is NOT REQUIRED on the Decree Entry Date and will NOT be required by the Court unless you receive specific written direction advising you otherwise.

The court cannot give you any legal advise. If you have any questions about this matter, you should speak to y our own attorney, the proposed fiduciary, or the fiduciary's attorney.

IT IS MOST IMPORTANT THAT YOU READ YOUR LIST OF RIGHTS, WHICH ACCOMPANIES THIS NOTICE.

Court telephone number: 860 739-6052

Fax number 860-739-6738

The Court's mailing address is:

118 Pennsylvania Avenue, Niantic, CT 06357

Dated this 16th day of November, 2007

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No.08-25

Supreme Court, U.S.
FILED
SEP 18 2008
OFFICE OF THE CLERK

In the
Supreme Court of United States

IN THE MATTER OF KINGSLEY K. HUBBY

BEN HUBBY MD

Petitioner

SUPPLEMENTAL

DAY PITNEY LLP

Respondent

On Petition for Writ of Certiorari to the Supreme Court of Connecticut

---

SUPPLEMENTAL BRIEF IN REQUEST, GIVEN MRS. HUBBY'S CIRCUMSTANCES ARE WORSENING, THAT THE COURT PROVIDE RELIEF AND TAKE JURISDITION OF CONSTITUTIONAL QUESTIONS AND CONFLICT OF INTEREST IN THE CENTER OF THOSE ISSUES

PETITION FOR WRIT OF CERTIORARI

BEN HUBBY MD, Pro Se
815 E. 66TH Street
Savannah Ga. 31405
Tel 912 352 1088
FAX 912 352 3556

Mr. Allan Taylor
Counsel of Record
Day Pitney LLP
242 Trumbull St.
Hartford CT 06103
Tel 860 275 0225
FAX 860 275 0343

QUESTION PRESENTED

In case where, as a favor to an influential law firm, state courts denied protection of law for an impaired elder whose circumstances have worsened, will the Supreme Court intervene to provide relief to Mrs. Hubby and her son?

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JURISDICTION

Under Title 28 U. S. C. Section 1257, the Supreme Court's jurisdiction to review state court decisions on

federal issues requires finality below and no possible state remedy. Nevertheless, the Court reserves leeway as to how "finality" when there is an important federal question and further proceedings are pending below. [1]

The federal question is whether Connecticut state courts are allowed to deny application of state law for an elder to favor a law firm that injured her as to carve out a class of citizens denied equal protection. [2]

In his petition to the Connecticut Supreme Court [3], Ben Hubby showed equal protection was denied, as in *Shelley v. Kraemer* and *Burton v. Wilmington Parking Authority.*

The Supreme Court took jurisdiction in *Cox Broadcasting Corp. v. Cohn*,[4] before the trial on the broadcast of a rape victim's identity, which was against state law; and created *four exceptions* that allow jurisdiction on federal issues, while further proceedings remain below.

This case falls within Cox's *second exception*, where a federal issue ought to be addressed while lower courts resolve issues that will not require further Supreme Court review.

Under the statute applying to appointment of an involuntary conservator for an impaired person, [5] Ben

1 *Cohen v. Beneficial Loan Corp*, 337 U. S. 541, 546 (1949) cited in *Supreme Court Practice* Ninth Edition by Gressman E, Geller KS, Shapiro SM, et al. BNA Books 2007 Page 156

2 Petition for Certiorari Pages 6-9; 12-14; 20-22

3 Appendix **B** in Petition for Certiorari Pages A- 11 &12

4 420 U.S. 469 (1975)

5 Petition for Certiorari Page 2

Hubby was permitted to petition for appointment as his mother's conservator and move in state courts for her, while awaiting a hearing on his appointment.[6]

As the U. S. Supreme Court allowed operators of a family planning clinic to assert constitutional rights of married persons seeking contraception[7] Ben Hubby may come to the Supreme Court on behalf of his mother's constitutional rights, and his own behalf, under *Baker v. Carr*,[8] to seek relief based on an injury traceable to another party, remedied by a favorable ruling[9] — the injury of a son kept from rescuing his mother.

There will be no recourse in further proceedings below unless the Supreme Court intervenes.

SUMMARY

Mrs. Hubby, who just turned 100 years old, was refused protection of law to keep in her affairs a law firm that came to harm to her security. She was exploited, her money was used to defeat her interests, her own physician was compromised, and Ben Hubby's quest to help was blocked. Mrs. Hubby's circumstances have deteriorated; her household is on drift without someone in charge, yet politics in the state courts block Ben Hubby from being appointed his mother's guardian, though she needs one more every day.

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6 Id Section on "*Standing*" on fourth page of Petition

7 *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965)

8 369 U. S. 186, 204 - 208 (1962)

9 Justices Breyer's and O'Connor's dissent in *Nike, Inc. ET. AL. v. Kasky*, 539 U. S. 654, 667 (2003), citing *Bennett v. Spear*, 520 U. S. 154, 162 (1997).

STATEMENT OF FACTS

Exhibits in Appendix of Petition for Certioari are referred to as: P– A, P- B, P–C, etc.

Exhibits attached to this Supplemental Brief: S–A, S–B, S–C, etc

Deterioration in Mrs. Hubby's circumstances

As the U. S. Supreme Court will appreciate, the circumstances for an elder approaching her 100th year are dynamic.

- Mrs. Hubby's mental faculties continue to decline. (S–A) [10].
- Mrs. Hubby is falling and arrangements for her safety need to be re- constituted
- There is no guardian for Mrs. Hubby's person hood to take charge and make necessary changes in her care and supervision. (P– A)
- As no one is in charge, there is indecision and drift, which is not the way things should be.

The logjam

While Mrs. Hubby's affairs were brought under the jurisdiction of the courts, she was opportuned to write a letter in praise of the law firm that diminished

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10 Ben Hubby's 11/27/07 affidavit on his mother's declining mental acuity and memory is attached to his re-petition to be named his mother's conservator filed in Probate Court in November, 2007

her security, [11] (Appendix S-**B**) although Mrs. Hubby indicates she does not know what is going on in her legal representation. [12]

Ben Hubby moved for competency exam to protect his mother. Gallup opposed. (S-**C**) Mrs. Hubby's personal physician was compromised into believing Gallup is the guardian of her personhood such that Thompson ought not speak to Ben Hubby about any aspect of her health (S-**D**), whereas there is no guardian of Mrs. Hubby's personhood.[13]

Motion for *trial de novo*

Ben Hubby moved in Superior Court for a trial de novo, designated as # 129 on the Superior Court docket sheet. (S-**H**) No order has been entered on this motion, which is still pending (S–**I**)

In Appellate Court, Ben Hubby moved to have the case remanded for transfer to the Superior Court of the Middlesex District for *trial de novo* in Judge Elaine Gordon's court (S– **J**) under Sec. 12-1 of the Connecticut Practice Book (S–**K**) Appellate Court did not rule on this motion. [14]

Thus, *two separate motions* for a trial de novo under Connecticut law – one in Superior Court, one in Appellate Court – were never acted upon.

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11 Petition For Writ Of Certiorari Page 4 and top section of Page 5

12 Id Appendix **C** # 2

13 Id Appendix A-1

14 # 8 in affidavit attached to Ben Hubby's re-petition to be appointed his mother's conservator, 11/27/07

ARGUMENT

I

THE STATE REMOVED MRS. HUBBY FROM PROTECTION OF LAW FOR FAVORITISM

[A] The law was denied

The state courts did not apply Connecticut law for Mrs. Hubby bearing on conflict of interest, attorney disqualification, the duty of courts to enforce Rules Professional Conduct, and the power of trial courts to disqualify attorneys *sua sponte* without reference to standing– *all the law of this case.* [15] [16]

The courts failed to address conflict of interest

The Official 2008 Connecticut Practice Book states Rule 1.7 of the ABA's Model Rules was amended June 26, 2006 to take effect January 1, 2007 [17] six days before Ben Hubby petitioned to be named his mother's involuntary conservator.

The Rule states ".. a lawyer shall not represent a client if the representation involves a concurrent conflict of interest" which exists if "the representation of one client will be directly adverse to another client"; or "materially limited" by the lawyer's duty to another

---

15 Petition for Certiorari, Pages 12 to top of 14

16 With the exception that Superior Court Judge Elaine Gordon allowed Ben Hubby to move for disqualification of Day Pitney.

17 Official 2008 Connecticut Practice Book. Commission on Official Legal Publications 2008 Page 13

client. Joint representation is allowed if the lawyer reasonably believes he can give diligent representation to both, and each gives informed consent in writing.[18] There is no claim Mrs. Hubby signed a waiver.

For attorney Dudley to *help NM recover his power*, he had to sacrifice Mrs. Hubby's security, which he did. To *help Mrs. Hubby* gain security, NM would lose his power.

Rule 1.7 encompasses a most important principles of legal ethics, yet, in over 15 months, the state courts refused to enforce it, though they have in other cases.[19]

[B] Court rulings came from favoritism and politics

- At the outset Judge McNamara let it be known the Probate hearing *was not going to go against Day Pitney*, no matter what the facts were.
- That Judge McNamara's refused to schedule a hearing on Ben Hubby's petition in 5 1/2 months, (S-**E**, S-**F**) when the law requires a hearing in one month, indicates the Court was burying this case.
- If the courts intended to be fair, due process would not have been withheld. [20]
- No rational reason can be found for the courts' refusal to apply law on conflict of interest other than favoritism towards Day Pitney.

---

18 Id

19 As in *American Heritage, Inc. V. Gelinas*, 62 Conn. App. 711 (201)

20 Petition for Certiorari Pages 20-22

II

MRS. HUBBY IS TRAPPED BY VIOLATION OF ETHICAL NORMS

When Justice Brandeis prepared his dissent in *Olmstead v. United States* [21], he wrote on yellow lined paper: "...In a government of laws, the Government must observe the law scrupulously. It teaches the whole people by example..." [22]

Here, the lesson was learned and ethical norms were breached.

- The law firm used its power to oppose Ben Hubby's quest to help his mother, and Mrs. Hubby was made to pay for the opposition, as the firm was on her penny
- It appears there were four violations of the Rules of Professional Conduct which govern 1) conflict of interest; 2) contact with a represented person; 3) not misleading a tribunal; and 4) diligent representation, never harm.

III

CORRECTION OF MRS. HUBBY'S CIRCUMSTANCES IS BLOCKED

Under *Prince v. Sheffield,*[23] an appeal from probate

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21 277 U.S. 438 (1928)

22 Quoted in *Brandeis An Intimate Biography of one of America's truly great Supreme Court justices.* Lewis J. Paper 1980 Prentice Hall, Inc. Englewood Cliffs, New Jersey 1980 Page 311

23 158 Conn. 286 (1969)

should result in a full *de novo* hearing unless a record has been made. *Andrews v. Gorby.* [24] No court reporter was present at the Probate hearing, no transcript was taken.

Yet, as Connecticut law, fairness and justice were withheld, it is not likely Ben Hubby will be granted *trial de novo*, unless the Supreme Court intervenes.

IV
IMPROPRIETIES IN STATE COURTS THAT CAUSE CITIZENS TO LOSE CONSTITUTIONAL RIGHTS IS A NATIONAL PROBLEM

Mississippi

Plaintiff's attorney, Richard Scruggs, reputed to have made a billion dollars on class action cases, asserted these cases were successful because the lawyers in Mississippi have relationship with state court judges, who respond to the popularity of suits against rich, unpopular defendants. "It doesn't matter what the evidence or the law is." Money is spread around and everyone is "in on the deal" Law suits have been filed on behalf of clients "who were not always legitimately injured" [25] [26]

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24 237 Conn. 12, 15-16 (1996)

25 Peter J. Boyer: The Bribe - How the Mississippi lawyer who brought down Big Tobacco overstepped. The New Yorker May 19, 2008, quoting from Scruggs's "Asbestos for Lunch" discussion, referenced below

26 Richard Scruggs, "Asbestos for Lunch" - panel discussion 5/9/02 INDUSTRY COMMENTARY June 11, 2002.

Nevada

The *Los Angeles Times* investigated the wide open, "frontier justice" dispensed by many district state judges in Las Vegas. [27] [28] Judges commonly accept campaign contributions from lawyers appearing in their courtrooms, often when their cases are pending. It is widely accepted that contributions affect outcome of cases. Judges often do not disclose relationships that have swayed their rulings. In commercial law suits, judges tend to appoint as receivers their friends, whose billings are so high that companies they oversee are fleeced.

Ohio

The *New York Times* studied the influence of campaign contributions for election to the Ohio Supreme Court and elsewhere[29] Amongst 1500 cases decided by the Ohio Supreme Court over 12 years, justices often accepted contributions after argument, but before votes were cast. When contributions were greatest by liberal groups, decisions tended their way. The reverse occurred now that corporate interests contribute the most money. Six out of ten justices studied voted for their contributors more than 70% of the time. In a survey by *Justice at Stake* of 2400 state judges, more than half admit campaign contributions influence their decisions.

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27 Michael J. Goodman and William C. Rempel: "In Las Vegas, They're Playing With a Stacked Deck". *Los Angele Times* June 8, 2006

28 Id: " For This Judge and His Friends, One Good Turn Led to Another" *Los Angeles Times* June 9, 2006

29 Adam Liptak and Janet Roberts: "Campaign Cash Mirrors a High Court's Rulings" *NY Times* 10/1/2006

** ** ** **

Litigants adversely affected by rulings driven by politics, favoritism or corruption in state courts are denied equal protection of the laws. With evidence of widespread improprieties that can defeat Constitutional rights, it is striking a paucity of such cases come to the Supreme Court [30]

When litigants are overwhelmed by politics and favoritism in state courts, it is tough to decide whether to keep fighting what was a hopeless battle. Mr. Plessy, Mr. Lyons, Mr. Korematsu, Mr. Konigsberg kept fighting.

CONCLUSION

Years ago, in the rural South, when a doctor, who sewed up a cut on a small boy's arm, realized the lad's mother couldn't pay the bill, he took the stitches out. On that day, medicine was used to do harm.

When the law firm undid arrangements that attorney Granville Morris placed for Mrs. Hubby's peace of mind, the firm took stitches out of her security and law was used for harm.

After 15 months of litigation no trace is found that the state courts ruled for law, for Rules of Professional Conduct, for the lawyer's duty to his client, or for Mrs. Hubby's welfare.

From the inclination of state courts of Connecticut to let politics trump protection of law to benefit a favored law firm; and improprieties in state courts across America that lead to a denial of equal protection of the laws, Mrs. Hubby may represent a rather large

30 In a search of Justia - the Supreme Court Center (http://supreme.justia.com/index.html)

class, although every single citizen is protected by the 14th Amendment from arbitrary discrimination by government. [31]

No matter harm to Mrs. Hubby, the courts were determined not to hold an influential law firm accountable to rules that govern the practice of law and the law itself.

Yes, the case is about a 100 year old woman, but the law and the rule of law were on trial and they did not fare well.

Politian legibus, colleges polities, adaptandae [32]

RELIEF REQUESTED

Ben Hubby requests that :

1) Given Mrs. Hubby's circumstances are deteriorating, the Supreme Court appoint Ben Hubby involuntary conservator of his mother's estate and personhood pending a hearing before Superior Court Judge Elaine Gordon, of the Middlesex District Family Court, who was originally assigned this case.
2) The United States Supreme Court reverse the

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31 *Village of Willowbrook v. Olech*, 528 U. S. 562, 565 (2000)

32 "Politics are to be adapted to the laws, not the laws to politics". *Black's Law Dictionary, 8th Edition.* Bryan A Garner, Editor in Chief. Page 1746

decision of the Connecticut Supreme Course and order the Supreme Court of Connecticut to ensure that state law and due process are applied in this and all cases before the state courts of Connecticut.

3) The Supreme Court retain jurisdiction on the constitutional issues raised in Ben Hubby's petition.
4) The Court disqualify Day Pitney from further representation of Mrs. Kinsley Hubby, her estate or any part of her estate now and ever more and return all fees to her estate paid by Mrs. Hubby or her estate since December 1, 2005, certified by the United States Trust Company of Hartford CT and Mr. Ron Baude, CPA, of New London, CT.
5) The Supreme Court remand all other issues in this case for a trial de novo to Superior Court Judge Elaine Gordon.
6) Because the law broke down in the state courts of Connecticut, the Supreme Court retain jurisdiction for the purpose of any order, direction, or modification of the Court's order deemed necessary.

Respectfully submitted this 18 day of September, 2008

Ben Hubby

Certificate of Service

Ben Hubby certifies he has this day served Counsel for Respondent his motion to the Supreme Court placing same in the U. S. Mail, sent to Counsel's address of record, to wit:

Mr. Allan Taylor
Counsel of Record
Day Pitney LLP
242 Trumbull St.
Hartford CT. 06103
Tel 860 275 022 FAX 860 275 0343

This 10 day of September, 2008

Ben Hubby, Petitioner

APPENDIX

S/A

STATE OF GEORGIA

COUNTY OF CHATHAM

In the matter of Kingsley K. Hubby

Appearing before the duly appointed officer authorized to take oaths, Ben Hubby, of full age and free of any mental illness, deposed and on his oath states the following:

1

I am a family practitioner and the son of Kingsley Hubby, age 99, who resides in East Lyme, Connecticut. My mother and my deceased father scrupulously made sure arrangements for their most vulnerable time were in place.

2

It's been my mother's intent to remain in our family's home. For several years she and my father required round the clock supervision by a care team headed by Marcia Dubreuil.

3

For the last several years my mother has not been capable of managing her financial affairs which were since 12/12/2005 managed by my brother, Nick Hubby until he became ill, whereupon her finances were in some disarray. A voluntary conservator of my mother's estate was appointed on April 3rd, 2007, although the witness to my mother signing the petition – Marcia Dubreuil – head of my mother's home care team – states my mother appeared not to understand the petition when signed.

4

For the past several years my mother has required 24 hour care and supervision. She does not shop for herself, meals are prepared for her; she must be supervised in showering, cleansing and hygiene.

5

Over several years my mother has lost mental capacity and recent memory and isn't aware of many of the things going on in her life, including her legal representation, nor does she appear to have understood documents and letters she's been opportuned to sign.

6

In the late fall 2006, when I stopped in on my way to see my brother in hospital in Maine, she asked where I was going. I told her Portland, then she asked again and again where I was going.

7

In speaking to my mother on February 9th, 2007 regarding my belief that she needed a conservator, I observed that she lost the foundation of my short discussion, such that when I was finished, I knew she did not follow what I had said, though it was very straightforward.

8

When my sister, Kinny, passed on September 8, 2007, my mother was informed the next day. Almost immediately afterwards appeared to forget. Since, I've been called by her care team asking me how to approach my mother asking how Kinny is doing.

9

As my mother's physician son, I state her survival and care is completely dependent upon others, especially the home care team that has been constructed for her care

and safety.

All of the facts set forth here are true and correct to the best of my knowledge.

Sworn to and subscribed _____ before me this 27th _____ day of November, 2007

_____ _____

Ben Hubby Notary

S/B

Kingsley Hubby

Dear Judge McNamara:

I am writing to tell you that I am completely satisfied with my representation by Dane Dudley and the firm Day Pitney! I am confident that my interests have been served and that my estate plan is well executed. I am grateful to my son, Nick, for bringing us together and for all of his hard work on my behalf.

I have enjoyed my meetings with Mr. Dudley and look forward to continuing our work together.

Sincerely

Kingsley K. Hubby

March 31st 2007

S/C

NO: CV07-4007105S

BEN HUBBY

SUPERIOR COURT

NEW LONDON JUDICIAL DISTRICT

AT NEW LONDON

KINGSLEY K. HUBBY, ET AL JUNE 18, 2007

MEMORANDUM OF LAW IN OPPOSITION TO

MOTION FOR COURT ORDERED EVALUATION

Citing no authority, the Appellant moves this Court to order his mother, Kingsley K. Hubby, to submit to an evaluation, "to determine whether Mrs. Hubby has the capacity to fully understand documents and letters she might be opportuned to sign." Appellant's Brief, Para. 3. In support of this proposition, he references events that allegedly occurred during the period of March, 2006, through July 7, 2006. Appellant's Brief, Para. 2. These events are 13 months at the earliest and 9 months at the latest before the April 3, 2007, Appointment by the East Lyme Probate Court of Mrs. Hubby's Voluntary Representative, George Gallup.

Should the Court ultimately hear this Appeal, it will sit as a Court of Probate in a trial de novo of Mrs. Hubby's Application for Voluntary Representation. CGS Sec. 45a-646; CGS Sec. 45a-186(a) (Aggrievement by Decree of the Probate Court required to appeal.)

In appeals from probate, the Superior Court is a Court of limited jurisdiction. Graham v. Estate of Graham, 2 Conn. App. 251, 254 (1984). It, like Probate Court, has only such powers as are given it by statute or are reasonably to be implied in order to carry out its statutory powers. "It is a familiar principle that a Court which exercises limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly described by the enabling legislation. The Probate Judge is not a Chancellor. His

[**Not:** *Just Page 1 and Page 3 of this memorandum is available to Ben Hubby at this time, for which he apologizes to the Court, however these pages are offered to show Gallup and attorney McKeever opposed competency examination for Mrs. Hubby. The third page follows*]

This Court should not countenance as a litigation tactic by any party an allegation, real or imagined, of incapacity. The authority to determine incapacity of any person is vested, in the first instance, in the Probate Court; CGS Sec. 45a-648, and incapacity can only be determined after a Hearing and by clear and convincing evidence. CGS Sec. 45a-650(d).

It should be noted that CGS Sec. 45a-648(b) provides in its relevant part that, "any person who willfully testifies either in Court or by report to the Court falsely to the incapacity of any person in any proceeding provided for in Sections 45a-644 to 45a-662, inclusive, shall be fined not more than $1,000.00 or imprisoned not more than one year, or both."

For all of the foregoing reasons, the Motion for Evaluation should be denied.

KINGSLEY K. HUBBY AND

GEORGE GALLUP, CONSERVATOR

By_____

Kenneth M. McKeever
P.O. Box 514
Niantic, CT 06357-0514
(860) 739-6296

S/D

David Thompson M. D.
22 WEST MAIN STREET
NIANTIC, CONN. 06357
TELEPHONE: 739-4431

3/11/08

Re: Kingsley Hubby

Dear Dr. Hubby,

At the present time, I am restricted to discussing your mother's medical situation based on HIPPA with her and her conservator, George Gallup.

Sincerely,

David D. Thompson, Jr. MD

S/E

Ben Hubby, M.D.

03/28/2007

Re: Mrs. Kingsley Hubby

Ms. Patricia Stratos
Clerk
Probate Court, East Lyme District
Town Hall
Town of East Lyme
Fax: (860) 739-6930

Dear Patricia,

Having been cured by the most recent bill (check coming in the mail) I am going to try very hard not to offer future motions.

But as negotiations ended, I respectfully request the Court to take up my petition and filed in early January, to be considered alongside the one for George Gallup, for the Courts consideration at the hearing set for 4/3/2007.

Thank you very much.

Ben Hubby

S/F

STATE OF CONNECTICUT

COURT OF PROBATE

[Type or print in black ink]

COURT OF PROBATE, DISTRICT OF East Lyme
DISTRICT NO. 045

ESTATE OF/IN THE MATTER OF ORDER | DATE OF

Kingsley Hubby (07-001) | **August 3, 2007**

PETITIONER

Ben Hubby, 815 East 66th Street, Savannah, GA 31405

DATE OF HEARING | TIME OF HEARING | PLACE OF HEARING *[Street and Town]*

September 18, 2007
10:00 AM

East Lyme Probate Court
110 Pennsylvania Avenue
Niantic, CT 06357

UPON THE APPLICATION OF THE PETITIONER FOR the appointment of a conservator of both the estate and the person of the above named respondent AS PER APPLICATION ON FILE MORE FULLY APPEARS

IT IS ORDERED THAT: Said application be heard and determined at the court of probate at the place, date, and time indicated above.

BY ORDER OF

.....

THE COURT | Judge Ass't Clerk

S/G

STATE OF CONNECTICUT
COURT OF PROBATE

COURT OF PROBATE, DISTRICT OF East Lyme
DISTRICT NO. 045

ESTATE OF/IN THE MATTER OF

KINGSLEY HUBBY (07-001)

At a court of probate, held at the time and place of hearing set by the Court, together with any continuances thereof, as of record appears, on the petitioner's MOTION REQUESTING PROBATE COURT JUDGE JEFFREY MCNAMARA TO RECUSE HIMSELF FROM ALL FURTHER JUDICIAL PROCEEDINGS INVOLVING BEN HUBBY

PRESENT: Hon. Jeffrey A. McNamara, Judge

After due hearing, THE COURT FINDS that:

Notice of hearing is waived.

And it is ORDERED AND DECREED that:

The petitioner, Ben Hubby's, Motion Requesting Probate Court Judge Jeffrey McNamara to Recuse Himself from all Further Judicial Proceedings Involving Ben Hubby is hereby denied.

Dated at Niantic, Connecticut, this 3rd day of August, 2007.

.....
Jeffrey A. McNamara, Judge

S/H

DOCKET SUMMARY II RETURN 05/15/2007
04/15/2008
P/S NEW LONDON SUPERIOR FILE 05/15/2007
9:53:33
HUBBY, BEN VS HUBBY,
KINGSLEY
LAST ACT 03/31/2008 ADR STATUS: NONE
RECLAIM
HIGH ENTRY 140-00 TO/
S/C?
125-00 PTF 08/06/2007 MOTION FOR
ORDER 45 DIARY 08/13/2007 DEND
08/27/2007 HURLEY,
126-00 PTF 08/08/2007 MOTION FOR ORDER
DIARY 08/15/2007 DEND 08/27/2007 HURLEY, R.
127-00 PTF 08/20/2007 REQUEST

128-00 PTF08/29/2007 MOTION TO
DISQUALIFY DIARY 09/05/2007 DEND 09/10/2007
HURLEY, R.
129-00 PTF 09/06/2007 MOTION FOR A NEW
TRIAL 45 DIARY 09/13/2007

S/I

In the matter of Kingsley K. Hubby
CV 07 400 7105
Appearing before the duly appointed office authorized to administer oaths, Ben Hubby, of full age and free of any mental illness, deposed and on his oath, states the following:

1

I am the appellant before the Connecticut Superior Court in the matter of Kingsley K. Hubby, my mother,, of East Lyme, Connecticut.

2

In the summer of 2007, I submitted a request for a trial de novo on all issues in Superior Court, with the exception of attorney disqualification, which is on appeal.

3

On the docket sheet in Superior Court, this pleading was entered as Number 129 – Motion for New Trial – although #128 was placed in ink on the left hand corner of the first page, which on the docket sheet is indicated as Motion to Disqualify.

4

I never received an order on my request, treated as a motion by the Clerk's Office.

5

On April 10th at 3 PM I called the Clerk's Office and spoke to Donna, who looked my case up on the computer. Donna informed me that no order had been entered on the motion of a new trial, indicated as #129 on the docket sheet.

Donna put me on hold for several minutes while she checked another source. When she came on line, she said, "I do not see where #129 was ruled on... There is no order."

Further, Affiant sayeth not. This 16th day of April, 2008.

_____ _____

Ben Hubby Notary

S/J

: APPELLATE COURT
: STATE OF CONNECTICUT
IN THE MATTER OF KINGSLEY HUBBY
: DECEMBER 13, 2007

APPELLANT'S MOTION, ON RESOLUTION OF APPEAL, TO HAVE CASE REMANDED TO THE COURT ADMINISTRATOR FOR TRANSFER TO THE FAMILY TRIAL DOCKET OF THE MIDDLESEX DISTRICT SUPERIOR COURT FOR A TRIAL DE NOVO ON ALL OUTSTANDING ISSUES.

Under Connecticut Practice Book Section 12-1 and Connecticut General Statutes Section 51-347b(a), COMES APPELLANT, on resolution of this appeal, to move this Honorable Court as a judicial authority to remand this case to the Chief Court Administrator for transfer to the Family Trial Docket, Judge Elaine Gordon presiding, to whom this case was originally assigned, for fairness for all parties

History of case.

In December, 2006, having discovered his mother's stewardship was fraught with problems such as conflict of interest in her legal representation, his siblings refusing to conference, Appellant petitioned to be named conservator of Mrs. Hubby's person on January 7, 2007 so as to solve problems in her life. To gain family agreement, Appellant lay his petition aside for in good fait negotiations from January to mid March, 2007. Because of violations of the RPC and harm caused, Appellant moved to disqualify attorney Dudley and his firm from representing Mrs. Hubby. Attorney Dudley and Mr. Gallup – Mrs. Hubby's son in law – came forth with a petition naming Gallup as conservator of Mrs. Hubby's estate. On 4/3/07, Probate Court denied the motion to

[**Note**: *Ben Hubby exhibits just the first page of his motion to show that he moved in Appellate Court to have the case transferred to the Middlesex Family Court where sits Judge Elaine Gordon, originally assigned this case.*]

S/K

CHAPTER 12

TRANSFER OF ACTIONS

Sec.

1-1. Procedure for Transfer
1-2. Transfer of Action Filed in Wrong Location of Correct Court
1-3. Transmission of Files and Papers

For previous Histories and Commentaries see the editions of the Practice Book corresponding to the years of the previous amendments.

Sec. 12-1. Procedure for Transfer

Any cause, or the trial of any issue therein, may be transferred from a judicial district court location to any other judicial district court location or to any geographical area court location, or from a geographical area court location to any other geographical area court location or to any judicial district court location, by order of a judicial authority (1) upon its own motion or upon the granting of a motion of any of the parties, or (2) upon written agreement of the parties filed with the court. (See General Statutes 51-347b and annotations.)

(P.O. 1978-1977, Sec. 212.)

Sec. 12-2. Transfer of Action Filed in Wrong Location of Correct Court

A clerk of the court of a judicial district or geographical area should not accept a civil cause which is made returnable to a judicial district or geographical area of which such person is not the clerk. A clerk who does accept and enter such a civil cause shall, upon discovery

of the error, bring the matter to the attention of the court. The judicial authority shall then order the plaintiff to file a motion to transfer with such notice to the defendant as the judicial authority may direct. If the plaintiff complies, the motion to transfer shall be granted; but if the plaintiff fails to comply with the order of the judicial authority with a reasonable time, the judicial authority shall dismiss the action with costs.

(P.B. 1978-1997, Sec. 213.)

Sec. 12-3. Transmission of Files and Papers

Upon the transfer of any action, the clerk of the court in which such action is pending shall transmit to the clerk of the court to which such cause is transferred the original files and papers in such cause with a certificate of such transfer, who shall enter such cause in the docket of the court to which it is so transferred; and such cause shall thereafter be proceeded with in the same manner as if it were originally brought to such court. When a case which has been claimed for trial is subsequently transferred to another court, a new certificate of closed pleadings shall not be required, and its position on the inventory of pending cases of the transferee court shall be determined by the certificate of closed pleadings date in the original file. Where only the trial of an issue or issues in an action is transferred, the files, after such issues have been disposed of, shall be returned to the clerk of the court where the action originated and judgment may be entered in such court. (See General Statutes 51-347b; see also Section 14-8.)

(P.B. 1978-1997, Sec. 215.) (Amended June 29, 1998 to take effect Jan. 1, 1999.)